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10/056,262

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Peter L. Sirota

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EXAMINER

JONES III, CLYDE H

ART UNIT

PAPER NUMBER

2623

DATE MAILED: 10/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/056,262

Applicant(s)

SIROTA ET AL.

Examiner

Clyde H. Jones III

Art Unit

2623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-55 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-55 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 7/28/2006.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Response to Arguments*

1. Regarding claim 1 the applicant argues neither Blasko nor Rand teach providing an advertisement publisher with a profile of a user of client system.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In response to the applicant's arguments that Blasko fails to teach a profile of a client and that Blasko "merely uses predetermined demographic information" the examiner respectfully disagrees. The examiner interprets the claimed profile of a user of client system to be analysis information representing characteristics of the user which reads on Blasko's user information that is a determination of person type, i.e., characteristics of the user (including demographic information [par. 56, lines 6-9] further more item 322 of fig. 2 clearly teaches a profiling module in the client system. Applicant's arguments are not persuasive.

Regarding the applicants arguments that Blasko in view of Rand fail to teach "providing an advertisement publisher with a profile of a user of a client" because the network provider and advertisers are shown as separate entities in fig. 1 of Rand. The examiner respectfully disagrees. The examiner is looking at network provider and advertisers as a system, i.e., an advertisement publishing system/provider in which the

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advertiser and the network provider publicly issue (broadcast) advertisements. There is nothing in the applicant's claim language that prevents the examiner from making such an interpretation. Further more Applicant's arguments are not persuasive.

Regarding claims 7, 31, and 50 the applicant argues Blasko fails to teach adaptive retrieval of the advertisements in a manner that is consistent with a quality objective for receiving and rendering the streaming program on the client system and even more specifically that Blasko does not teach or suggest a quality objective for receiving and rendering said streaming program". The examiner respectfully disagrees. The examiner interprets a quality objective to be a performance (quality) criteria (objective) and because Blasko teaches that it is desirable to provide advertisers with an assurance that certain criteria (objectives) are met before there ads are displayed (par. 57, lines 1-5; par. 50, lines 6-8) and that it is so important to meet this criteria that the advertiser will not be charged if the criteria is not met (par. 57, lines 11-13), i.e., when the performance of the advertisement service does not meet an agreed upon criteria, e.g., because a user's television is not turned on, the a quality objective is not met and it is recognized by the management system so that they provide a better quality (higher level of confidence) system (par. 33, lines 10-13). The applicant's arguments are not persuasive.

Regarding claims 8, 32 and 51, the applicant argues that Blasko fails to teach monitoring performance metrics indicative of whether the client system is meeting the

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performance objective for receiving and rendering the streaming program. The examiner respectfully disagrees. The examiner interprets the claimed performance metrics to be operational status (performance) measurements (metrics), e.g., measurements of current levels, frequencies, or sub carriers [par. 41, liens 1-6; par. 42, liens 5; par. 43, lines 7-8; par. 44, lines 2-3], which must meet a criteria or threshold before an ad is displayed. The DDOS display device operational status detector monitors/detects the performance metrics indicating the client is meeting the performance objective, i.e., the operational criteria [par. 46]. The applicant's arguments are not persuasive.

Regarding claims 9, 33, and 52, the applicant argues that Blasko fails to teach adjusting at least one of an operational bit rate and an operational pulse rate. The examiner respectfully disagrees. The examiner interprets the claimed operational pulse rate to be a synchronizing (operation) signal (pulse) frequency (rate/cycle). Blasko teaches adjusting the synchronizing signal frequency of the receiver in order to perform advertisement display (par. 44, lines 2-10). The applicant's arguments are not persuasive.

Regarding claims 10, 20, 34, and 44, the applicant argues that Brown does not teach provision of a profile. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642

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F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231

USPQ 375 (Fed. Cir. 1986). Furthermore Blasko teaches a profile as discussed above.

The applicants arguments are not persuasive.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 7-9, 31-33, and 50-52 are rejected under 35 U.S.C. 102(e) as being anticipated by Blasko et al. (US 2002/0083435 A1).

Regarding claims 7, 31 and 50, Blasko teaches Blasko teaches an apparatus (subscription system 20 – fig. 1) (and corresponding method) comprising:

storage medium (RAM) having stored therein programming instructions (par. 23, lines 4-12; par. 34-35; par. 39, lines 7-15; par. 49, lines 1-3; par. 31, lines 4-7) designed to enable the apparatus to adaptively retrieve advertisements in a manner that is consistent with a quality objective for receiving and rendering the streaming program on the client system (par. 29, lines 4-15; par. 33, lines 10-14; par. 46; par. 57; par. 60) [The

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examiner interprets a quality objective to be a performance (quality) criteria (objective) and because Blasko teaches that it is desirable to provide advertisers with an assurance that certain criteria (objectives) are met before there ads are displayed (par. 57, lines 1-5; par. 50, lines 6-8) and that it is so important to meet this criteria that the advertiser will not be charged if the criteria is not met (par. 57, lines 11-13), i.e., when the performance of the advertisement service does not meet an agreed upon criteria, e.g., because a user's television is not turned on, the a quality objective is not met and it is recognized by the management system so that they provide a better quality (higher level of confidence) system (par. 33, lines 10-13)];

cache (store in advance) a plurality of advertisements of various time lengths (par. 28; par. 30;, lines 11-12; par. 35, line 5-par. 36, line5), and

synchronously render one or more of the cached advertisements during an advertisement time slot (avail) of a streaming program (par. 51, lines 1-6; par. 53), to effectively substitute (replace) advertisements with the cached ads, if any, included in the streaming program for rendering during the advertisement time slot (par. 26-par. 27); and

at least one processor coupled with the storage medium to execute the programming instructions (par. 34-35).

Regarding claims 8, 32 and 51, Blasko teaches the programming instructions are designed to enable the apparatus to include as part of the performance of said adaptive retrieving, monitoring of one or more performance metrics (current, frequency, color

detection levels) that are indicative of whether the client system is meeting the performance objective for receiving and rendering (the TV is turned on) the streaming program (par. 41-46).

Regarding claims 9, 33 and 52, Blasko teaches said programming instructions are designed to enable the apparatus to include as part of the performance of the adaptive retrieving, adjustment of at least one of an operational pulse rate (synchronizing signal frequency) (par. 44, par. 46; in which the subscriber system adjust/synchronizes the phase of the receiver to accurately process received signals).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blasko et al. (US 2002/0083435 A1) in view of Rand (US 2003/0226142 A1).

Regarding claims 1 and 25, Blasko teaches an apparatus (subscription system 20 – fig. 1) (and corresponding method) comprising:



storage medium (RAM) having stored therein programming instructions (par. 23, lines 4-12; par. 34-35; par. 39, lines 7-15; par. 49, lines 1-3; par. 31, lines 4-7) designed to enable the apparatus to

cache (store in advance) a plurality of advertisements of various time lengths (par. 28; par. 30, lines 11-12; par. 35, line 5-par. 36, line 5), and synchronously render one or more of the cached advertisements during an advertisement time slot (avail) of a streaming program (par. 51, lines 1-6; par. 53), to effectively substitute (replace) advertisements with the cached ads, if any, included in the streaming program for rendering during the advertisement time slot (par. 26-par. 27); and

at least one processor coupled with the storage medium to execute the programming instructions (par. 34-35).

Blasko further teaches ad insertion information sent to the head end/advertiser (par. 54; par. 37), ads received by the user based on a user profile (determination of the person type) (par. 56, lines 5-15; 322 – fig. 2) [The examiner interprets the claimed profile of a user of client system to be analysis information representing characteristics of the user which reads on Blasko's user information that is a determination of person type, i.e., characteristics of the user (including demographic information [par. 56, lines 6-9] further more item 322 of fig. 2 clearly teaches a profiling module in the client system], targeting ads towards a certain audience (par. 33, lines 10-14).

However, Blasko fails to disclose provision of advertisement publisher with a profile of the user of client system.

In an analogous art, Rand teaches it is desirable to provide the provision of advertisement publisher with a profile (analysis information representing characteristics) of the user of client system for selective insertion of media data into a data stream (par. 11; par. 20, lines 1-5; par. 22).

Therefore it would have been obvious to one of ordinary skill in the art to modify the system of Blasko to include the further limitation provision of advertisement publisher with a profile of the user of client system for selective insertion of media data into a data stream as taught by Rand for the added advantage of optimally customizing a subscribers data stream by analyzing content preferences and demographic profiles (Rand - par. 21, lines 11-14).

Regarding claims 2, 26, Blasko in view of Rand teach obtaining the cached ads for targeting the user client system (Blasko - par. 3, lines 10-12; par. 60, lines 4-6; Rand- par. 11; par. 20, lines 1-5; par. 22) based on the profile (Blasko -par. 56, lines 5-15; 322 – fig. 2).

Regarding claims 3 and 27, Blasko in view of Rand teach the profile of the user of client system comprises selected ones of a plurality of demographic and interest (preference) characteristics of the user (Blasko-par. 11; par. 20, lines 195; par. 22).

Regarding claims 4 and 28, Blasko in view of Rand teach the profile of the user of client system comprises geographic (region) information of the user (Blasko-par. 11; par. 20, lines 5-7; par. 22, lines 6-8).

Regarding claims 5 and 29, Blasko in view of Rand teach the programming instructions are designed to enable the apparatus to receive the advertisements of various time lengths from the advertisement publisher ( Blasko-par. 31, lines 11-13; par. 36, lines 6-8).

Regarding claims 6 and 30, Blasko in view of Rand teach the programming instructions are designed to enable the apparatus to receive locations (advertisement resource locators) of the advertisements of various time lengths from the advertisement publisher, and retrieve the advertisements of various time lengths from the locations (Blasko-par. 31, lines 7-13; par. 48).

Regarding claims 11 and 35, Blasko in view of Rand teach the programming instructions are further designed to enable the apparatus to receive a notification of the advertisement time slot (avails) (Blasko-par. 26; par. 27; par. 31, line 11-par. 33, line 5), including the advertisement time slot's time length (Blasko-par. 35, lines 5-6; par. 36, lines 8-25; 310 – fig. 2; par. 40, lines 8-14; par. 49; par. 51, lines 1-5).

Regarding claims 12 and 36, Blasko in view of Rand teach the programming instructions are designed to enable the apparatus to include as part of the performance of the receiving of a notification of the advertisement time slot, by having an advertisement module (304 – fig. 2) receives the notification from a player of the apparatus receiving and rendering the streaming program (Blasko-par. 40, lines 4-7 & 12-14; or par. 58-59; par. 23, lines 4-12; par. 25, lines 11-13).

Regarding claims 13 and 37, Blasko in view of Rand teach the programming instructions are designed to enable the apparatus to include as part of the performance of the receiving of a notification of the advertisement time slot, by having an advertisement module (304/310 – fig. 2) receive the notification from an operating system service (function module 302), of the apparatus receiving a streaming of event notifications (avail info) companion to the streaming program on behalf of a player (306/24) of the streaming program of the apparatus (Blasko-par. 40; par. 51, lines 1-5; par. 52-par. 53; par. 23, lines 4-12).

Regarding claims 14, 23, 24, 38, 47, and 48, Blasko in view of Rand teach the programming instructions are designed to enable the apparatus to include as part of the performance of the receiving of a notification of the advertisement time slot, receipt of the notification from a broadcaster (headend/service provider) of the streaming program (Blasko-par. 27; par. 31, lines 4-6; par. 49; par. 51, lines 1-5; par. 23, lines 12-18).

Regarding claims 15, 16, 39, and 40, Blasko in view of Rand teach the programming instructions are designed to enable the apparatus to include as part of the performance of the synchronous rendering of one or more of the cached advertisements during the advertisement time slot, selection of one or more of the cached advertisements with their combined total time length at least equals to the advertisement time slot's time length (Blasko-par. 26; par. 48; par. 51, lines 1-5; par. 52-53).

Regarding claims 17, 41, and 54, Blasko in view of Rand teach the programming instructions are further designed to enable the apparatus to notify a publisher of an advertisement (central office/advertiser) when rendering commences (an ad is played) on the client system for the advertisement (Blasko-par. 37).

Regarding claims 18, 42, and 55, Blasko in view of Rand teach the programming instructions are designed to enable the apparatus to notify a publisher of an advertisement when rendering ceases (after an ad is played) on the client system for the advertisement (Blasko-par. 37; par. 54).

Regarding claims 19 and 43, Blasko in view of Rand teach the streaming program is a streaming audio program, and the advertisements are audio advertisements (Blasko-par. 59; par. 23, lines 5-9; par. 25).

Regarding claims 21 and 45, Blasko in view of Rand teach the streaming program is a streaming multi-media program (web page, electronic program guide, etc.) (Blasko-par. 23, lines 12-18; par. 25, lines 4-11; par. 38, lines 7-9; par. 59), and the advertisements (included in the streaming program) are multi-media (web page, EPG, etc.) advertisements (Blasko-par. 58, lines 5-9; par. 25, lines 8-11).

Regarding claims 22 and 46, Blasko in view of Rand teach the streaming program is a streaming television program, and the advertisements are television advertisements (Blasko-par. 23, lines 5-18; par. 25, line 3; par. 27; par. 58, line 9).

Regarding claim 49, Blasko teaches a system comprising:

first server providing at least one of advertisements of various time lengths, and locations of advertisements of various time lengths to a client (par. 31, lines 11-13; par. 36, lines 6-8);

second server (headend/service provider) providing a streaming program to the client, the streaming program having one or more advertisement time slots (par. 23, lines 12-18; par. 26-27; par. 38, lines 5-10); and

the client (subscriber system) coupled with the first and second servers to cache (store in advance) the plurality of advertisements of various time lengths (par. 28; par. 30, lines 11-12; par. 35, line 5-par. 36, line 5), and synchronously render one or more of the cached advertisements during an advertisement time slot (avail) of a streaming program (par. 51, lines 1-6; par. 53), to effectively substitute (replace) the cached ads

for advertisements, if any, included in said streaming program for rendering during the advertisement time slot (par. 26-par. 27).

However, Blasko fails to disclose provision of advertisement publisher with a profile of the user of the client.

In an analogous art, Rand teaches it is desirable to provide the provision of advertisement publisher with a profile (analysis information representing characteristics) of the user of client system for selective insertion of media data into a data stream (par. 11; par. 20, lines 1-5; par. 22).

Therefore it would have been obvious to one of ordinary skill in the art to modify the system of Blasko to include the further limitation provision of advertisement publisher with a profile of the user of client system for selective insertion of media data into a data stream as taught by Rand for the added advantage of optimally customizing a subscribers data stream by analyzing content preferences and demographic profiles (Rand - par. 21, lines 11-14).

Regarding claim 53 Blasko in view of Rand teach the client is equipped to provide a third server (ad server) coupled with the client, a user profile of a user of the client (par. 22 in which it would have been obvious to provide ad servers access to profiles for better targeting of ads).

6. Claims 10, 20, 34, and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blasko et al. (US 2002/0083435 A1) in view of Rand (US 2003/0226142 A1) as applied to claims 1 and 25 above, and further in view of Brown (US 6,950,623 B2).

Regarding claims 10 and 34, Blasko in view of Rand teach receiving the duration of the advertisements cached in advance (Blasko-par. 49).

However, Blasko in view of Rand fail to disclose one of 30 seconds advertisements and 60 seconds advertisements.

In an analogous art Brown teaches it is desirable to provide one of 30 seconds advertisements and 60 seconds advertisements for the purpose of replacing specified advertisements with equal length ads (fig. 6B - lines 5-10; fig. 10; col. 4, lines 40-47; col. 6, lines 50-55; col. 9, lines 16-36; col. 9, lines 50-51).

Therefore it would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to modify the system of Blasko in view of Rand to include the limitation one of 30 seconds advertisements and 60 seconds advertisements for the purpose of replacing specified advertisements with equal length ads as taught by Brown for the advantage of optimizing successful payout of inserted ads by making sure they are not longer than the identified ad segment (Brown- col. 9, lines 26-27; Blasko – col. 3, lines 10-14 & par. 37, lines 6-10).



Regarding claims 20 and 44, Blasko in view of Rand teach audio advertisements (Blasko - par. 59; par. 23, lines 5-9; par. 25), however fail to specifically disclose a streaming radio program.

In an analogous art Brown teaches it is desirable to provide a streaming radio program for inserting ads into it (col. 4, lines, 33-47; col. 3, lines 52-56; col. 3, lines 66- col. 4, line 4).

It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to modify the system of Blasko in view of Rand to include the limitation a streaming radio program as taught by Brown for the advantage of increasing advertisement opportunities and thus revenue for advertisers.

### ***Conclusion***

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of


the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Clyde H. Jones III whose telephone number is 571-272-5946. The examiner can normally be reached on 9-5:30 p.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Grant can be reached on 571-272-7294. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CJ

  
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